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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/713,744	11/15/2000	Thomas P. Quigley	61300/221	2947

7590

11/16/2001

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EXAMINER

SHAPIRO, JEFFERY A

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 11/16/2001

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/713,744

Applicant(s)

QUIGLEY ET AL.

Examiner

Jeffrey A. Shapiro

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 10 is objected to because of the following informalities: In the second line, the word "forms" appears to be more grammatically correct and consistent as "form". Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what is meant by "discharge concrete from one of the first end and the second end". It appears to be illogical and grammatically inconsistent.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis. Davis discloses the concrete transport vehicle and chute assembly as follows.

As described in Claims 1, 11 and 20;

1. a chassis having a front end and a rear end (see figure 1);
2. a mixing drum supported by the chassis, the drum having a first end and a second end and an opening in communication with a discharge hopper and a main chute (see figure 1);
3. a pedestal extending between the chassis and one end of the drum to support that end of the drum (note that it is inherent that a support must be provided for said drum);
4. a cab enclosure supported by the chassis (note that it is inherent that there be a cab on said chassis);
5. an extension chute (14 and 16) operatively aligned with the main chute (12), the extension chute comprising a chute assembly;
6. a chute assembly comprising as follows;
 - a. a frame (18) having a first end and a second end, each end including an arcuate end angle member (22) maintained in a spaced apart relationship by a pair of chute rails (36) attached to each end angled member;
 - b. a chute skin (42) mounted within the frame and attached to each chute rail and each end angle member, wherein the chute assembly defines a longitudinally elongated concave chute;
 - c. a removable liner (50) mounted within the chute assembly adjacent to the chute skin;

As described in Claim 2;

7. the mixing drum is configured to discharge concrete from an end (see col. 1, lines 45-53);

As described in Claims 3, 12 and 20;

8. a hook mounted on each chute rail (24) proximate the second end of the chute assembly and a bracket assembly mounted on each chute rail proximate the first end of the chute assembly (see figure 1 and note that fitting (40) and pintles (38) behave and can be reasonably construed as Applicants' hook (99) and associated attachment (98));

As described in Claims 4, 13 and 20;

9. the chute rails mounted on the chute are configured to releasably engage and support the liner (see col. 2, lines 8-20);

As described in Claims 5, 14 and 23;

10. the liner is composed of plastic (see col. 3, lines 10-32);

As described in Claims 6, 15 and 22;

11. the frame and chute skin are composed of aluminum (see col. 1, lines 54-56);

As described in Claims 7 and 16;

12. an elongated channel attached to each end angle member and to the chute skin (see figure 1);

As described in Claims 8 and 17;

13. the elongated channel is composed of aluminum;

As described in Claims 9, 18, 20 and 21;

14. the chute rails (24) are each configured, in conjunction with a liner flange (36) (see figure 2), to form a liner pocket to receive the liner and removably retain the liner within the extension chute;

As described in Claim 10;

15. the chute rail (24) and the liner flange (36) are composed of the same material and forms a single, integral member (see figure 2);

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson. Christenson discloses the concrete transport vehicle and chute assembly as follows.

As described in Claims 1, 11 and 20;

1. a chassis having a front end and a rear end (see figure 1);
2. a mixing drum supported by the chassis, the drum having a first end and a second end and an opening in communication with a discharge hopper and a main chute (see figure 1);

3. a pedestal extending between the chassis and one end of the drum to support that end of the drum (note that it is inherent that a support must be provided for said drum);
4. a cab enclosure supported by the chassis (note that it is inherent that there be a cab on said chassis);
5. an extension chute (28) operatively aligned with the main chute (24), the extension chute comprising a chute assembly;
6. a chute assembly comprising as follows;
 - a. a frame (200) having a first end and a second end, each end including an arcuate end angle member (74) maintained in a spaced apart relationship by a pair of chute rails attached to each end angled member (see figure 4);
 - b. a chute skin (78) mounted within the frame and attached to each chute rail and each end angle member, wherein the chute assembly defines a longitudinally elongated concave chute;
 - c. a removable liner (300) mounted within the chute assembly adjacent to the chute skin;

As described in Claim 2;

7. the mixing drum is configured to discharge concrete from an end;

As described in Claims 3, 12 and 20;

8. a hook (80) mounted on each chute rail proximate the second end of the chute assembly and a bracket assembly (82) mounted on each chute rail proximate the first end of the chute assembly;

As described in Claims 4, 13 and 20;

9. the chute rails mounted on the chute are configured to releasably engage and support the liner (see col. 7, lines 40-65);

As described in Claims 5, 14 and 23;

10. the liner is composed of plastic;

As described in Claims 6, 15 and 22;

11. the frame and chute skin are composed of aluminum (see col. 5, lines 41-68, noting that aluminum is implied to fit the criterion generally discussed and that it would be obvious for one ordinarily skilled in the art to choose aluminum to fit such a criteria as the case arose);

As described in Claims 7 and 16;

12. an elongated channel attached to each end angle member and to the chute skin (see figure 2);

As described in Claims 8 and 17;

13. the elongated channel is composed of aluminum (see col. 5, lines 41-68);

As described in Claims 9, 18, 20 and 21;

14. the chute rails are each configured, in conjunction with a liner flange, to form a liner pocket to receive the liner and removably retain the liner within the extension chute (see col. 7, lines 59-65 noting "transverse rib and trough combinations");

As described in Claim 10;

15. the chute rail and the liner flange are composed of the same material and forms a single, integral member;

Regarding Claim 10, note that one of ordinary skill in the art would find it expedient to combine the flange and rail into an integral member so as to provide for more streamlined manufacture of less parts.

In addition, Christenson meets the limitations of the claim except that it employs a trough and rib (see col. 7, lines 59-65) generally attached to the chute rather than an integral/unitary trough and rib. However, it has been held to be within the general skill of a worker in the art to make plural parts integral/unitary as a matter of obvious engineering choice. Therefore it would have been obvious to one of ordinary skill to make the trough and rib of the reference integral/unitary to facilitate releasable holding of the liner on the chute as suggested by Christenson. *In re Larson*, 144 USPQ 347 (CCPA 1965); *In re Lockart*, 90 USPQ 214 (CCPA 1951).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (703)308-3423. The examiner can normally be reached on 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P. Ellis can be reached on (703)308-2560. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-0552 for regular communications and (703)308-0552 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Jeffrey A. Shapiro
Patent Examiner,
Art Unit 3651



CHRISTOPHER P. ELLIS
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November 11, 2001